The motion that the Bill be read in the Assembly was put to the House and passed.

SECRETARY: The title of the Bill shall be "The Travancore Credit Bank Act (Amendment) Bill.

MR. K. G. KUNJUKRISHNA PILLAI: Sir, in view of the fact that amendements are very few I do not move for placing the Bill before the select committee.

MR. PULIYOOR T. P. VELAYUDHAN PILLAI: May I know whether the provisions of the Travancore State Aid to Industries Act were scrutinised and whether the Legal Remembrancer is sure that there is no conflict between the two.

MR. K. G. KUNJUKRISHNA PILLAI: Of one thing I can assure the House and that is that there is no conflict between the two.

MR. K. G. KUNJUKRISHNA PILLAI: I move that the Bill be taken into consideration.

MR. A. LEKSHIMINARAYANA AYYAR: I second it.

The motion was passed.

The motion that clauses 1 and 2 do form part of the Bill was put and carried.

Clauses 1 and 2 were added to the Bill.

The motion that the Title and the Preamble do form part of the Bill was put and carried.

The Title and the preamble were added to the Bill.

MR. K. G. KUNJUKRISHNA PILLAI: I move that the Bill be passed.

MR. A. LEKSHIMINARAYANA AYYAR: I second it.

The motion was put to vote and carried and the Bill was passed.

THE TRAVANCORE HIGH COURT ACT (AMENDMENT) BILL

MR. K. G. KUNJUKRISHNA PILLAI: Sir, I rise to introduce the Travancore High Court Act (Amendment) Bill. The Bill with the statement of objects and reason has been published in the gazette. The amendments new proposed in the High Court Act may be given mainly under two headings. The first is concerned with the investment of original jurisdiction in the High Court. I may correct myself, and say, extraordinary original jurisdiction. Sir, the necessity has very often been felt for this provision and for the provisions relating to this aspect of the case. I can place before this House, Sir, one particular instance from my direct knowledge to support my contention that investing the High Court with the original jurisdiction would be beneficial. A suit was started in 1104 on the demise of the late Sri Narayana Guruswamy with regard to the extensive properties relating to the Sivagiri Mutt as to who could suceed to his properties. Today I can say from my personal knowledge that the suit has not reached the stage of recording evidence. If Sir, a suit of such magnitude and such

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[Mr. K. G. Kunjukrishna Pillai]

importance to particular sections of the subjects of the State could have been placed before a judge of the High Court, there is no doubt that whatever may be the methods adopted to prolong it, it would not have been prolonged beyond beyond a maximum period of six months. I am giving only one instance. There is no doubt, that investment of extraordinary original jurisdiction in the High Court would be a beneficial measure. And for a long time there was some doubt, sir, whether the High Court has not some sort of original jurisdiction even after the present High Court has been constituted. In the Ruling in 57 T.L.R. 420 (F, B.) it is stated that the High Court has no original jurisdiction in civil cases at all and that it has only very limited original jurisdiction in criminal cases. So that, we have been compelled to take note of that ruling, and try to amend it and bring into existence a definite section by which the High Court will be empowered to exercise original jurisdiction. Another point is with regard to the powers of the the vacation judges. The powers of the vacation judges are now guided by the proviso to Section 8 of the High Court Act. The defect of the proviso has been pointed out in the same ruling which I have referred to. I am of opinion that unless more powers be conferred on the High Court, very urgent matters could not be decided by the High Court sitting in vacation. So that, an attempt is being made now to introduce a new section giving wider powers to the vacation judges of the High Court. I am stating for the information of the House that wide powers are given to the High Court Judges in British India; and still wider powers in the Courts of England, and therefore an attempt has been made, as I submitted already, to empower the High Court and the vacation judge with greater jurisdiction. There is one other section which I may comment on. There is a section asking for returns and other papers from the High Court. I am mentioning that, sir, because the intention underlying that section seems to have been misunderstood. Supposing, sir, for the information of this House itself, we want to have a tabulated statement of the number of cases pending, or the number of petitions pending, or the number of cases disposed of, at present apart from the demands of the Government, there is nothing which can induce the High Court to send any papers. If the Government feel that the statements of returns are necessary the Government may ask and the High Court may send same. By this section this matter is regulated. These are the three main provisions. All other provisions are ancillary. I move that the Bill be read in the Assembly.

MR. A. LEKSHMINARAYANA AYYAR: I second it.

PRESIDENT: Honourable members perhaps would allow me, as perhaps being specially qualified, to speak on this Bill placed before the House. Extraordinary original jurisdiction of the British Indian courts has not been often invoked and I can claim to be one of those who first invoked that extraordinary jurisdiction and I consider, with good results both on the civil and the criminal courts. Honourable mem-

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bers are perhaps aware of what is known as the 'Besant case'. Adayar was just outside the Madras municipal limit. So a suit against Dr. Besant had to be filed in the sub-court at Chingelpet and at that time there was no gainsaying the fact that if the suit had been filed in the sub-court at Chingelpet it would have taken 5 or 6 years for disposal and that the appeal would have taken another 5 or 6 years. It then occurred to a junior practitioner, who happened to be myself, to invoke the extraordinary jurisdiction of the High Court. There was a great deal of controversy on that matter. Nevertheless, the High Court, withdrew that case from the Chingelpet court and tried it. The result of it was that the suit was disposed of in 27 days. The suit referred to by the Legal Remembrancer just now is much less in magnitude than that suit. In that suit we had to get witnesses examined on commission in England, in Italy, and in America; we had to examine and cross examine witnesses on commission at Benares, Allahabad, Calcutta, Nagpur and Poona. For that it took less than 9 months. Let me give another instance.

It was my good fortune to have appeared in what is called the 'Church Fund case' in which I started my legal career in Cochin; in the year 1919. It was one branch of the 'Church Fund case.' Then I came here and appeared before the High Court in the same case. Then it went on for a few decades. I believe that the suit is still pending. When I first came here to assume the present position, I was asked to arbitrate in the dispute of Sivagiri Mutt. I could not arbitrate because an administrator shall not function as an arbitrator between two rival factions.

The fact is that the High Court should be able to try important and noteworthy cases in the capital city according to the most modern methods and thus improve the quality of the administration of justice. That would be a very good thing. I found to my surprise here that the discovery of documents, inspection of documents and various ancillary matters which are required to dispose of suits take a very long time. It is not intended nor would it be possible for the High Court to find the time to send for every case and try it. But there may be cases of great importance, in which a speedy disposal by the High Court would be both an example and an incentive to the subordinate courts. The question of original jurisdiction and extraordinary jurisdiction arises in this connection. Then there is what is called the *Habeas corpus* jurisdiction, and the *Certiorari* jurisdiction which was established in the case of the University Case in which I appeared at Madras.

There are many matters which can be disposed of with economy and expedition and which may serve as very fine examples to the subordinate judiciary if the High Court had the power of extraordinary jurisdiction. Moreover it appears to me that the Travancore High Court, on account of its illustrious history and its traditions, should not be below other courts in the matter of its plenary jurisdiction. If the Court of Equity in England which derives its authority from the Lord Chancellor who is a delegate of the Sovereign can exercise some jurisdiction, if

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[President]

the King's Court which is a delegate of the authority of the Sovereign of England can exercise certain functions, if the Chartered High Court can exercise certain functions under the Charter of His Majesty's Government, I do not see why the supreme court of this country, the custodian of its laws, should not be able to exercise every jurisdiction which is conferred on any court throughout the world. It is from that point of view that I feel that this court should not be limited in the jurisdiction, either on the Criminal, Civil or the *Habeas Corpus* side and that it should have plenary and absolute powers. As a matter of fact, the Royal Court of Appeal was once exercising, or it was believed that it could exercise these original powers. We do not want to go into antiquarian research but there has been in recent times a tendency to decline to exercise jurisdictional powers. As a matter of fact, the whole of American Jurisprudence reveals that American Courts have taken jurisdiction in their hands, thus enabling themselves to stand against the excesses of the executive. It is therefore necessary that these extraordinary powers should be given to the High Court. I am saying this not only as a member of the Government but also as a member of the profession. It is by virtue of these powers that the High Court will judge where the executive has a right to detain a man without trial and take certain actions under the statutory powers conferred on it quite rightly, and within the ambit of its powers. And there are *certiorari* powers of even wider import. The High Court will also exercise certain residual powers. Thus it will become the pedestal of justice in the land. So it is that I feel that this court should exercise all the powers that are exercised and enjoyed by any other court in the world.

The question of the returns and Statements to be furnished by the High Court is a matter which has been disposed of by the Legal Remembrancer. In none of these requests for the sending up of records, Government wish to take any right which the ordinary litigant does not have. Today, the ordinary litigant, on application to the Court can get certain documents even though he is not a party to the suit. But in the matter of returns and in the matter of disposals and so forth, this Government must necessarily, in the exercise of their responsibilities to the people of the country and to this House and the sister House, demand those returns. I think I need not say more on this point.

SADASYATILAKA T. K. VELU PILLAI: This is a very important measure and I wish to make certain observations on some of the more important aspects of the proposed legislation. I must thank the Chair for illuminating some of the dark avenues. But for the explanation offered from the Chair some of us should have found very great difficulties in accepting the principles enunciated in some of the clauses. In view of the explanation given by the Chair, I must confess, Sir, that one feels it very difficult to make out a case against the Bill. You will forgive me for saying this—it is not a compliment to the Chair, but truth will bear the statement—but the whole issue has been very fully clarified why extraordinary powers and jurisdiction should be conferred upon the High Court.

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The Bill is silent on matters which make the grant of extraordinary jurisdiction possible, because the question of extraordinary jurisdiction should legitimately arise when a court is exercising ordinary original jurisdiction. If there is no original jurisdiction, there is no scope for extraordinary jurisdiction. I am not merely punning upon the words. I am very serious upon the argument and my chief contention is—and I for a long time have been of that opinion—that this High Court has not under the law, powers which every dignified, respectable, useful High Court must have. Sir, the preamble of the present High Court Act IV of 1099 merely explains the scope and the Act confers on the High Court only powers in criminal and civil cases. It is also stated that all the powers and authorities exercised by the late Sadar Court are also to be exercised by the High Court. The late Sadar Court, Sir, was only an Appellate Court which had no original jurisdiction. So for many years, ever since I became a lawyer, I have been feeling that the High Court Act should be changed.

PRESIDENT : What really happened was this. In British India there were what are called the Supreme Courts and the Sadar Courts. Supreme Courts existed only in Madras, Bombay and Calcutta. These Supreme Courts were courts both of original and of appellate jurisdiction and dealt with the capital cities, whereas the other High Courts of Allahabad, Patna, Lahore and Nagpur were courts that had no Supreme courts as their ancestors. That is how you find that these courts have ordinary original jurisdiction. Travancore will not be the only place with extraordinary jurisdiction without there being ordinary original jurisdiction also. At present in the courts at Lahore, Patna, Allahabad, Nagpur and Karachi, there is no ordinary original jurisdiction but there is an extraordinary jurisdiction under Letters Patent and the Charter.

These are statements made by me not as President with a view to curtail discussion but to stimulate discussion and made merely as a senior member of the Bar.

SADASYATILAKA T. K. VELU PILLAI : I shall be failing in my duty if I do not mention some facts here. I had occasion in the course of an argument in the High Court to refer to some cases which were heard by Justice Sadasiva Aiyar. On another occasion I had the privilege of referring to a case in which you appeared. Thus fortified I felt proud that what I intuitively felt was shared by other eminent persons as well. The point that I wish to emphasise is this that it is a defective Act that we have got in what is known as the High Court Act. Going through the chapters, we find sections dealing with criminal and civil cases of a particular type.....

PRESIDENT : Order, order. Government have been faced with two alternatives here, either to bring in a consolidated enactment or to make amendments to the old Act. They felt that as it would take more time to bring an altogether new Act than to bring in amendments, it would be better for the present to be satisfied with amendments. But they have not given up the other idea. They are entirely one with the idea of the member who spoke last that the time will come soon when the whole Act will have to be recast.

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SADASYATILAKA T. K. VELU PILLAI: The whole Act is unsatisfactory; there are regulations passed before 1010 and from 1010 M. E. when Kantan Menon made drafts of laws which were promulgated by the Sovereign. Those laws are such as would be a credit to a man of the present day. From the time of Kantan Menon, in 1010, 1037, 1067 and 1097 a sort of tinkering process has been going on, attention being shown to deal only with certain important matters which were considered to be absolutely necessary. At the time when the golden jubilee was celebrated, you paid the High Court the compliment of having an illustrious efficiency. Considering the fact that it has received the compliments of a gentleman of experience throughout the Empire, considering its traditions, considering the fact that for years and years the tinkering process of changes has been going on and considering, above all, the fact that you are here now to give advice—and there is no likelihood of getting such advice in future—I think, Sir, whatever may be the difficulties, and however much the delay might be, the Legal Remembrancer should be asked to have a comprehensive Bill drafted and present it at the next session of the House. I say all these because I respect the High Court and unless the High Court here has the powers necessary to function properly, we shall be the laughing stock of the world.

The House rose for the day at 6 p. m.

B. PARAMU,
Secretary to the Sri Mulam Assembly.

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